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**IN THE CIRCUIT COURT FOR
LAWRENCE COUNTY, ALABAMA**

STATE OF ALABAMA, *ex rel.*
WALTER A. BELL, as Commissioner of
Insurance,

Plaintiff,

v.

N&N LAND SERVICES, INC., in its
corporate capacity and doing business as
TOWN CREEK FUNERAL HOME,
JAMES D. "DONNIE" NYE, and
TERESA RENAE NYE,

Defendants.

Civil Action Number
CV 2004-42

ORDER

This matter came before the court on March 7, 2005, for a trial of the above-styled civil action. Appearing at the trial was Vincent R. Ledlow, Esq., Assistant Attorney General, representing the plaintiff, Walter A. Bell, in his capacity as Commissioner of the Alabama Department of Insurance ("Bell") and Denise Azar ("Azar"), the receiver appointed by this court to conserve the estates of the defendants. No appearances were made by or for any other party.

The plaintiff and Azar made an offer of proof of the following facts in open court:

(1) Defendant N&N Land Services, Inc. ("N&N") is a corporation organized and existing under the laws of the State of Alabama. While utilizing the trade name "Town Creek Funeral Home", N&N operated a funeral home in Town Creek, Alabama. While doing business as Town Creek Funeral Home, N&N sold funeral merchandise and services on a preneed basis.

(2) At some time around November, 2002, the Department issued a certificate of authority to N&N authorizing it to conduct preneed sales of funeral merchandise and services. Consequently, N&N is a "certificate holder" as that term is defined in §27-17A-2(15) of the Alabama Code.

(3) Defendant James D. "Donnie" Nye ("Donnie Nye") is above the age of nineteen and is an individual resident of the State of Alabama. At all times material to the Complaint, Donnie Nye was a director of N&N, was the president of N&N, and was the primary officer, agent, or employee through whom N&N conducted its business affairs.

(4) Defendant Teresa Renae Nye ("Teresa Nye") is above the age of nineteen and is an individual resident of the State of Alabama. At all times material to this complaint, Teresa Nye was a director of N&N and was an officer, agent, or employee through whom N&N conducted its business affairs.

(5) In its application for a preneed certificate of authority, N&N represented to the Department that no "person with the power to direct the management or policies of . . . [N&N] been found guilty . . . of any crime involving fraud, dishonest dealing, or any other act of moral turpitude". This statement, however, was incorrect. Donnie Nye, a

director and the president of N&N, has been convicted of numerous crimes involving fraud, dishonest dealing, and acts of moral turpitude.

(6) In its application for a preneed certificate of authority, N&N represented to the Department that it had never "been the subject of any bankruptcy proceeding". This statement, however, was incorrect. In May, 2003, the Department discovered that N&N had filed Chapter 11 bankruptcy in February of 2003.

(7) In connection with its application for a certificate of authority, N&N provided information to the Department concerning its financial condition. In particular, N&N represented to the Department that it had assets of \$1,400,000.00 and liabilities of \$691,550.00. This information, however, was incorrect. In May, 2003, the Department learned from financial information filed in connection with N&N's bankruptcy case that the corporation had assets of \$238,700.00 and liabilities of \$1,366,828.38.

(8) N&N's business was conducted from certain real property located in Town Creek, Alabama. That real property was subject to a mortgage given in favor of a financial institution having its primary offices in Birmingham, Alabama, known as The Bank. Because the debt secured by the mortgage on N&N's business premises was not paid in a timely fashion, The Bank has foreclosed its mortgage on the real property and has taken possession of the former business premises of N&N.

(9) Azar has determined that approximately 30 consumers paid money to one or more of the defendants to purchase funeral merchandise or services preneed. Azar estimates these preneed purchasers are owed between \$25,000.00 and \$30,000.00. These purchasers have informed the Department, and on the basis of such allegations the Department alleges, that money they have paid on account of these purchases has not been returned to them.

(10) On February 19, 2004, pursuant to a verified complaint filed by Azar, this court entered a temporary restraining order (the "TRO") against the defendants which was continued in effect as a preliminary injunction on March 1, 2004. Pursuant to the TRO and the preliminary injunction, Azar entered into the defendants' former business premises, secured the personal property therein from harm, dissipation, waste, and damage, and began to investigate the business and financial affairs of the defendants.

(11) When Azar went to the defendants' former business premises to take possession of the defendants' personal property, the building was locked, there was no utility service, no one was present at the location to communicate or otherwise deal with consumers or creditors, and no business was being conducted by the defendants.

(12) There were no records located in the former business premises of the defendants. Former counsel for the defendants provided certain customer files related to the funeral home operation, but the defendants did not provide Azar with any documents concerning any of their business or financial transactions. Azar has obtained financial information concerning the defendants only via subpoena.

(13) The financial information Azar has been able to compile shows the defendants failed to establish a preneed trust account and did not deposit any funds into any preneed trust arrangement. The financial information Azar has been able to compile further shows there are no funds on deposit at any bank or other financial institution that can be used to repay consumers any of the funds they are owed.

(14) The financial information Azar has been able to compile shows a substantial portion of the cash generated by the defendants' business operations was spent by or otherwise conveyed to defendant Donnie Nye.

(15) Azar has liquidated and continues to liquidate the defendants' business assets and is holding the proceeds from that liquidation for distribution, pursuant to further order of this court, to the defendants' creditors. It is Azar's estimation there will not be sufficient assets to pay all of the defendants' creditors in full.

(16) Another individual has purchased the defendants' former business premises, and Azar has agreed to sell, pursuant to order of this court, the personal property used in the defendants' business operations to him.


(17) It is Azar's opinion that the defendants will not be able to continue business operations at their former business premises, nor will the personal property used in that business be available for them to use elsewhere.

Based on the foregoing offer of proof, this court concludes Bell and Azar have established, by a preponderance of the evidence, that N&N is insolvent, thereby providing grounds for the appointment of a receiver pursuant to §§27-17A-17(b) and 27-32-6(1) of the Alabama Code. In addition, based on the foregoing offer of proof, this court further concludes Bell and Azar have established, by a preponderance of the evidence, that the continued business operations of the defendants would constitute a hazard to preneed purchasers, beneficiaries, and the people of the State of Alabama, thereby providing grounds for the appointment of a receiver pursuant to §§27-17A-17(b) of the Alabama Code.

This court further finds the foregoing offer of proof establishes by a preponderance of the evidence that the defendants voluntarily ceased doing business at their former business premises and that there is no likelihood they could or would ever engage in the business of selling funeral merchandise or services at this or any other business location. Consequently, this court finds and determines that liquidation of the receivership estate, rather than rehabilitation of the business, is the proper object of this receivership proceeding. Azar is, therefore, ordered and directed to ~~continue to proceed with the liquidation~~ of the receivership estate subject to the orders and supervision of this court.

Except to the extent expressly modified by this or any other order of this court, the TRO and the preliminary injunction previously issued by this court shall remain in full force and effect.

Done this 7 day of March, 2005.


A. Philip Reich II
Circuit Judge

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JANICE HILL
CLERK OF COURT